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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,878	09/26/2001	Bruce S. Ellingboe	CV-0290US	9174
9561	7590	02/15/2005	EXAMINER	
POPOVICH, WILES & O'CONNELL, PA			DEAK, LESLIE R	
650 THIRD AVENUE SOUTH				
SUITE 600			ART UNIT	PAPER NUMBER
MINNEAPOLIS, MN 55402			3762	

DATE MAILED: 02/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	6
	09/963,878	ELLINGBOE ET AL.	
	Examiner	Art Unit	
	Leslie R. Deak	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 03 December 2004.
- 2a) This action is FINAL.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1 and 3-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 3-12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 26 September 2001 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

**DETAILED ACTION*****Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4 and 6-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,462,416 to Dennehey et al in view of US 5,385,540 to Abbott. Dennehey discloses a blood pumping cassette within a blood circuit with a plurality of tubing lines (134, 136) that connect to fluid passageways within the cassette. The cassette is comprised of a rigid portion connected to a flexible portion. (See FIG 9; column 6.) The blood circuit further comprises a control unit with a component interface region and an area that interfaces with the cartridge, and a pump. (See FIG 76; column 20.) The system further comprises blood reservoirs and other reservoirs that are used to dispense and receive liquids during processing (see column 5, line 65-67, column 6, lines 1-2, column 16, lines 40-45), flow control clamps located on all the various tubing lines, air bubble detectors (see column 10, lines 25-35). The cassette further comprises pressure sensors and valve stations that are actuated to regulate fluid flow (see columns 6-7).

Abbot discloses a blood circuit with a cassette that serves to control fluid flow in a cardioplegia circuit. Use of the cassette serves to simplify the fluid

control, preventing the operator from having to manually set up the fluid channels in the complicated circuit. Abbot discloses that the system incorporates an oxygenator 14, pumps in the pump cassette that send fluid from the oxygenator through the rest of the circuit back to the patient, and a cardioplegia circuit that combines blood and cardioplegia solution in the circuit (see columns 3-4). Abbot fails to disclose the tubing lines, valves, and sensors as claimed, but Dennehey, as delineated above, disclosed those claimed limitations. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to add the tubing lines, valves, and sensors, along with the other claimed limitations found in the Dennehey device, to the cassette disclosed by Abbott in order to provide a simplified, controllable cardioplegia fluid circuit, as taught by Abbot.

With regard to applicant's claim limitations drawn to the functions of the blood circuit, the pump, the reservoir, flow control clamp, sensors in the claims, the claims recite the functions of the devices in narrative form, and such recitations have not been given patentable weight. In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 USC 112, 6<sup>th</sup> paragraph, and must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language.

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,462,416 to Dennehey et al, in view of US 5,820,579 to Plotkin, in view of US 5,385,540 to Abbott. Dennehey discloses the blood circuit and cassette as claimed including an air detector, but fails to disclose a valve with diverting

mechanism. It is well known within the art of blood processing to provide air detectors and divert blood with bubbles in it so as not to introduce air bubbles into the patient, as taught by Plotkin. Plotkin discloses a cardiopulmonary bypass circuit with a pump and an oxygenator and an air detector 36. When the air detector senses a bubble in the line, microprocessor/controller 50 employs valve 38 to divert the blood and air bubble into recycle line 48, which serves as a reservoir, in order to prevent the air bubble from being introduced to the patient. Plotkin discloses that his system is better than conventional air trap systems, since the diverting technique diverts a minimum amount of fluid while maintaining adequate blood output to the patient (see column 4). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to add a diverting mechanism to the cassette and air sensor of the Dennehey/Abbot device in order to prevent introduction of air to the patient while maintaining adequate blood flow in the system.

#### ***Response to Arguments***

4. Applicant's arguments filed 3 December 2004 have been fully considered but they are not persuasive.
5. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally

available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the combined references do not teach away from one another. Dennehey specifically discloses that his blood cartridge merely supplies a centralized valving and pumping station that may be deployed in many blood processing situations. As applicant argues, Dennehey does not require the presence of an oxygenator for operation, but nothing in the Dennehey reference discourages an operator from adding an oxygenator to the blood processing assembly in order to provide more flexible processing operations.

As argued previously, the combination of Dennehey and Plotkin in view of Abbot merely suggests improvements to the Dennehey device, since Abbot specifically contemplates embodiments found in the Dennehey device and improves upon them. Furthermore, examiner is not combining the references to show any compatibility between the pumping systems of the two references. Rather, examiner has found another reason for combining the references, namely the presence of the oxygenator in the Abbott device. Therefore, the references are properly combined.

With regard to applicant's newly-added limitations, the Dennehey device already comprises various reservoirs and flow control valves in the disclosure.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3762

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie R. Deak whose telephone number is 571-272-4943. The examiner can normally be reached on M-F 7:30-5:00, every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 703-308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3762

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lrd  
9 February 2005



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